IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Criminal Revision Petition No.306/2006.
(Dhan Singh Vs. State of Rajasthan & Others)

DATE OF ORDER : May 2nd, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. M.K. Garg for the petitioner.
Mr. K.R. Bhati for non-petitioners.
Mr. S.N. Tiwari, P.P.

BY THE COURT :

In this revision petition, the petitioner complainant has made a prayer for setting aside the impugned judgment dated 07.03.2006 passed by larned Addl. Sessions Judge (Fast Track), Jalore in Sessions Case No.59/2005 whereby the learned trial Judge, while convicting the non-petitioners No.2 and 3 for offences under Sections 447, 325, 323/34 and 324/34, I.P.C., acquitted them from the charge under Section 307 and 307/34, I.P.C. and granted them benefit of probation under Section 4(1) of the Probation of Offenders Act.

It is contended by learned counsel for the petitioner that as per evidence on record both the non-petitioners No.2 and 3 were armed with weapons like axe and koonth and they inflicted as many as 9 injuries. It is argued by learned counsel for the petitioner that as per the X-ray report, Ex.-P/3 there was fracture of metacarpal bone suffered by injured Dhan Singh, therefore, finding of the trial Court with regard to the charge of committing offence under Section 307, I.P.C. is wholly erroneous. He contends that both the non-petitioners were armed with weapons and thus their intention was clear in furtherance of which they inflicted various grievous injuries to injured Dhan Singh. Learned counsel for the petitioner further contends that in the facts and circumstances of the case the accused non-petitioners are not at all entitled to be given benefit of probation, therefore, the impugned judgment deserves to be quashed and the matter requires to be remitted to the trial Court.

On the other hand, learned counsel for non-petitioners no.2 and

3 vehemently opposed the petitioner's prayer and contended that the judgment of the trial Court does not require any interference. It is further contended that the trial Court has rightly acquitted the non-petitioners from the charge under Section 307, I.P.C. Learned counsel for the non-petitioners argued that in the free-fight injuries have been caused and, according to the injury report of Dhan Singh, injured, out of the nine injuries noted only one injury is incised wound and, that too, is simple in nature and the other injuries are abrasions and bruises. Therefore, according to him, the trial Court has rightly arrived at the finding and granted benefit of probation to the accused non-petitioners.

Having heard learned counsel for the parties, I have carefully perused the impugned judgment and also scanned record of the case.

Out of the eight injuries noted on the person of the injured besides the fracture of metacarpal bone, only one injury is incised wound which too is simple in nature. Even taking into account the fracture of metacarpal bone, in the facts and circumstances of the case, the case does not travel beyond Section 325, I.P.C. In my opinion, the trial Court has rightly arrived at the finding in respect of charge under Section 307/34, I.P.C. and, therefore, the finding does not warrant any interference. It is obvious from the evidence on record that there is no trace of intention of committing murder in the present case, therefore, it cannot be said that the offence is proved on the record.

However, in the facts and circumstances of the case, looking to the injuries suffered by the injured, the amount of fine imposed by the trial Court towards payment of compensation to the injured appears to be quite inadequate and, therefore, the impugned judgment is modified to the extent that each of the accused non-petitioners shall deposit Rs.7,500/- within a period of three months which shall be paid to the injured Dhan Singh by way of compensation. Order is made accordingly.

With aforesaid modification in the impugned judgment dated 07.03.2006, the revision petition is disposed of.

(Gopal Krishan Vyas) J.